NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20CVS005150-910

Jay Singleton, D.O., and Singleton Vision Center, P.A.,

Plaintiffs,

v.

North Carolina Department of Health and Human Services; Josh Stein, Governor of the State of North Carolina, in his official capacity; Devdutta Sangvai, North Carolina Secretary of Health and Human Services, in his official capacity; Phil Berger, President Pro Tempore of the North Carolina Senate, in his official capacity; and Destin Hall, Speaker of the North Carolina House of Representatives, in his official capacity,

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiffs' motion for partial summary judgment and Defendants' motion to dismiss pursuant to N.C. R. Civ. P. 12(b)(6). The matter came before the undersigned three-judge panel for hearing on 18 November 2025. The parties were represented at the hearing by their counsel of record. This Panel retained jurisdiction of this case until this Order was entered. Having considered the motions, pleadings, other filings of record, all other competent evidence of record, briefs and arguments of counsel, and relevant case law, this Panel determines N.C.G.S. § 1131E-175 *et seq* to be facially constitutional.

PROCEDURAL HISTORY

1. Plaintiffs filed their original complaint on 22 April 2020, claiming a series of statutes, N.C.G.S. § 131E-175 *et seq* (2023), commonly known as the Certificate of Need Law ("CON Law") violates the fruits of labor, law of the land, exclusive

emoluments and monopolies clauses of the North Carolina constitution. *See* N.C. Const. art. I, §§ 1, 19, 32, 34. Plaintiffs sought an injunction preventing Defendants from enforcing the CON Law, a declaration of the CON Law is unconstitutional as applied to them, and recovery of nominal damages.

2. Defendants filed motions to dismiss pursuant to N.C. R. Civ. P. 12(b)(1) and 12(b)(6), on 29 June 2020 and 31 July 2020.

3. Following a hearing, the trial court denied Defendants' Rule 12(b)(1) motion but granted Defendants' Rule 12(b)(6) motion on 11 June 2021. Plaintiffs appealed.

4. On appeal, the Court of Appeals dismissed in part and affirmed in part the trial court's granting of 12(b)(6) largely for plaintiff's failure to exhaust administrative remedies. *Singleton v. N.C. HHS*, 284 N.C. App. 104, 111 (2022) ("Plaintiffs failed to file an application for a CON or to seek or exhaust any administrative remedy from DHHS prior to filing the action at bar. . . . Had Plaintiffs sought any administrative review, or the procedures were shown to be inadequate, their claim would be ripe for . . . jurisdiction. . . .").

5. The Court of Appeals held

> [A]bsence of subject matter jurisdiction may be raised at any time, this Court possesses no jurisdiction over Plaintiffs' procedural challenges. Plaintiffs' appeal is dismissed in part. . . . [Further], Plaintiffs' as-applied challenges in their complaint, taken as true and in the light most favorable to them, fail to state any legally valid cause of action. The trial court did not err in granting Defendants' Rule 12(b)(6) motion to dismiss. Considering the allegations in the complaint, as applied to Plaintiffs, the CON Law does not violate Plaintiffs' rights under the Law of the Land Clause. N.C. Const. art I, § 19. The order of the trial court is affirmed.

   Id. at 116-17.

6. Both the trial court and the Court of Appeals accepted Plaintiffs' description of their claims as "as-applied" challenges and evaluated their claims accordingly.

7. On appeal, the North Carolina Supreme Court determined that Plaintiffs' complaint alleges facts that could undermine the CON Law's constitutionality beyond the particular circumstances of these Plaintiffs and thus asserts both facial and as-applied challenges to the CON Law. The Court disavowed the Court of Appeals' jurisdictional analysis concerning the exhaustion of administrative procedures and remanded the case for determination to the facial claims by the present three-judge panel with direction to look at the

Court's recent decisions in *Askew v. City of Kinston*, 902 S.E.2d 722 (N.C. 2024), and *Kinsley v. Ace Speedway Racing, Ltd.*, 904 S.E.2d 720 (N.C. 2024). *Singleton v. N.C. HHS*, 386 N.C. 597, 599 (2024).

8. On 16 June 2025, Plaintiff's filed their amended complaint, alleging the CON Law is facially unconstitutional and unconstitutional as applied to them in violation of Article I, §§ 1, 19, 32, 34 and sought declaratory and injunctive relief.

9. Specifically, Plaintiffs allege that because North Carolina's CON Law requires that they first obtain a CON to develop an operating room to operate a "formal" surgical program, the CON Law, on its face, (1) violates their economic liberty and right to earn a living in violation of Article I, Sections 1 and 19 of the North Carolina constitution; (2) grants an exclusive privilege to CarolinaEast, the only entity in the Craven, Jones, Pamlico service area that owns operating rooms, in violation of Article I, Section 32 of the North Carolina constitution; and (3) grants a monopoly to CarolinaEast and bans Plaintiffs from entering the market in violation of Article I, Section 34 of the North Carolina constitution.

10. In response, Defendant's filed a motion to dismiss Plaintiffs' Amended Complaint pursuant to N.C. R. Civ. P. 12(b)(1) and 12(b)(6), filed on 15 July 2025.

11. This case was transferred to a three-judge panel on 04 August 2025.

12. On 25 August 2025, Plaintiffs filed a motion for partial summary judgment, under N.C.G.S. § 1A-1, Rule 56(a) regarding their Section 32 emoluments and Section 34 monopolies claims. Defendants dismissed their 12(b)(1) motion.

13. Pursuant to N.C.G.S. § 1-267.1, Chief Justice Newby assigned the undersigned to hear the facial constitutional challenge to N.C.G.S. § 131E-175 *et seq* (2023) on 26 August 2025.

STATEMENT OF THE CASE

1. In North Carolina, "[no] person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department [of Health and Human Services]." N.C.G.S. § 131E-178(a).

2. A certificate of need is a "written order which affords the person so designated . . . the opportunity to proceed with the development of the project." N.C.G.S. § 131E-176(3).

3. "The construction, development, establishment, increase in the number, or relocation of an operating room . . . in a license health service facility" is defined as a new institutional health service that requires a certificate of need. N.C.G.S. § 131E-176(16)(u).

4. North Carolina enacted the first CON Law in 1971 requiring a certificate of need prior to a new facility being built. The Supreme Court held that the 1971 version of the CON Law violated the law of the land, exclusive emoluments, and anti-monopoly clauses of the North Carolina Constitution. *In re Certificate of Need for Aston Park Hosp., Inc.,* 282 N.C. 542, 549-51 (1973).

5. In 1977, in light of the Supreme Court Striking down the CON Law in *Aston Park,* the General Assembly created a Legislative Commission on Medical Cost Containment which provided recommendations to the General Assembly. Acting on the Commission's recommendation, the General Assembly passed a new CON Law which included legislative findings of fact explaining how the CON Law would protect public health and improve healthcare quality and access while decreasing costs later.

6. Since its enactment, the General Assembly has continued to revisit and amend the CON Law to respond to evolving healthcare needs—the most recent amendment being in 2023.

7. Presently, North Carolina's CON Law requires that health care providers that want to expand or open facilities in a particular area must first prove to the satisfaction of the North Carolina Department of Health and Human Services ("NC DHHS") that the new or expanded service is needed by the community in a service area. NC DHHS makes determinations of operating room needs each year in the State Medical Facilities Plan ("SMFP") to become effective two years later.

8. According to the SMFP, there are eighty-two (82) service areas in the state for operating rooms.

9. To perform surgeries at Plaintiffs' facility, Plaintiffs must obtain both a facility license under the Ambulatory Surgical Facility Licensure Act, N.C.G.S. § 131E-145 *et seq* (2021) and a certificate of need under N.C.G.S. § 131E-175 *et seq*.

10. Here, Plaintiffs allege that they are unable to obtain a certificate of need because the SMFP does not project a need for a new surgical facility in their service area though at least 2027. Plaintiffs note that the SMFP has not projected a need for a new surgical facility in the last 15 years.

11. As it currently stands, the CON Law forces Plaintiffs to perform most surgeries at New Bern's CarolinaEast Medical Center.

12. CarolinaEast is the only licensed provider with an operating room certificate of need located in the service area of Craven, Jones, and Pamlico Counties and owns nine operating rooms.

13. Pursuant to the SMFP, this current single need determination of CarolinaEast being the only provider with an operating room has not been revised since 2012.

14. The Craven, Jones, and Pamlico service area is bordered by Beaufort, Lenoir, Duplin, Onslow, and Carteret's service areas as well as Pitt County. Across the counties, patients have access to eighty operating rooms owned by nine different providers.

CONCLUSIONS OF LAW

1. In ruling on a motion to dismiss pursuant to N.C. R. Civ. P. 12(b)(6), this Panel reviews the allegations of the amended complaint in the light most favorable to Plaintiffs. This Panel's inquiry is "whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory." *Harris v. NCNB Nat'l Bank of N.C.*, 85 N.C. App. 669, 670 (1987).

2. This Panel construes Plaintiffs' amended complaint liberally and accepts all allegations as true. *Laster v. Francis*, 199 N.C. App. 572, 577 (2009). This Panel, however, is not required to and does not accept as true allegations that are merely conclusory, unwarranted deductions of fact, unreasonable inferences, or conclusions of law. *See Good Hope Hosp., Inc. v. N.C. Dep't of Health & Human Servs.*, 174 N.C. App. 266, 274 (2005); *McCrann v. Pinehurst, LLC*, 225 N.C. App. 368, 377 (2013).

3. Dismissal of a claim pursuant to N.C. R. Civ. P. 12(b)(6) is proper "(1) when the complaint on its face reveals that no law supports [the] claim; (2) when the complaint reveals on its face the absence of fact sufficient to make a good claim; [or] (3) when some fact disclosed in the complaint necessarily defeats the . . . claim." *Oates v. JAG, Inc.*, 314 N.C. 276, 278 (1985); *see also Jackson v. Bumgardner*, 318 N.C. 172, 175 (1986).

4. Since its inception, the judicial branch has exercised its implied constitutional power of judicial review with "great reluctance," *Bayard v. Singleton*, 1 N.C. (Mart.) 5, 6, 3 N.C. 42, 1 Martin 48 (1787), recognizing that when it strikes

down an act of the General Assembly, the Court is preventing an act of the people themselves. *See Baker v. Martin*, 330 N.C. 331, 336-37 (1991).

5. North Carolina's state constitution declares that all political power resides in the people. N.C. Const. art. I, § 2. The people exercise that power through the legislative branch, which is closest to the people and most accountable through the most frequent elections. *See id.* art. I, § 9. The people, through the express language of their constitution, have assigned specific tasks to, and expressly limited the powers of, each branch of government, and only the people can amend it. *Harper v. Hall*, 384 N.C. 292, 297 (2023)(internal citations omitted).

6. The people act through the General Assembly. *State ex rel. Ewart v. Jones*, 116 N.C. 570, 570 (1895) ("[T]he sovereign power resides with the people and is exercised by their representatives in the General Assembly").

7. Unlike the Federal Constitution, "a state constitution is in no matter a grant of power. All power which is not limited by the [c]onstitution inheres in the people, and an act of a state legislature is legal when the [c]onstitution contains no prohibition against it." *McIntyre v. Clarkson*, 254 N.C. 510, 515 (1961).

8. The presumptive constitutional power of the General Assembly to act is consistent with the principle that a restriction on the General Assembly is in fact a restriction on the people. *Baker*, 330 N.C. at 336.

9. Thus, this Panel presumes that legislation is constitutional, and a constitutional limitation upon the General Assembly must be express and demonstrated beyond a reasonable doubt. E.g., *Hart v. State*, 368 N.C. 122, 126 (2015).

10. A party making a facial challenge to a statute must establish that a law is unconstitutional in all its applications. *State v. Grady*, 372 N.C. 509, 522 (2019). "The fact that a statute might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid." *State v. Thompson*, 349 N.C. 483, 491 (1998).

I. Fruits of Labor and Law of Land Clauses

11. In their amended complaint, Plaintiffs' allege the CON Law, on its face, violates their economic liberty and right to earn a living in violation of Article I, Sections 1 and 19 of the North Carolina constitution. Plaintiffs' argument rests on the constitutional guarantees set forth in of Article I, Section 1 and Section 19 the North Carolina constitution.

12. Article I, Section 1 provides that "We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness." N.C. Const. art. I, § 1.

13. The fruits of labor clause protects people "engaging in any legitimate business, occupation, or trade." *Kinsley v. Ace Speedway Racing, Ltd.*, 386 N.C. 418, 424 (2024) (citing *State v. Ballance*, 229 N.C. 764, 770 (1949)). "It bars state action burdening these activities unless the promotion or protection of the public health, morals, order, or safety, or the general welfare makes it reasonably necessary." *Id.*

14. Article I, Section 19 provides "[n]o person shall be . . . deprived of his life, liberty, or property, but by the law of the land." N.C. Const. art. I, § 19.

15. The law of the land serves to limit the state's police power to actions which have a real or substantial relation to the public health, morals, order, safety, or general welfare. *Poor Richard's, Inc. v. Stone*, 322 N.C. 61, 64 (1988).

16. These constitutional protections have been consistently interpreted to permit the state, through the exercise of its police power, to regulate economic enterprises provided the regulation is rationally related to a proper governmental purpose. *Id.*

17. Thus, to survive constitutional scrutiny under Sections 1 and 19, the challenged state action "must be reasonably necessary to promote the accomplishment of a public good, or to prevent the infliction of a public harm." *Id.* This test involves a "twofold" inquiry: "(1) is there a proper governmental purpose for the statute, and (2) are the means chosen to effect that purpose reasonable?" *Id*; *See also Kinsley*, 386 N.C. 418,424.

18. The Court of Appeals, applying the two-part test in *Poor Richard's*, previously upheld a challenge to CON Law under Sections 1 and 19 of the North Carolina constitution, determining that the purpose of the CON Law was proper and means chosen were reasonable. *Hope - a Women's Cancer Ctr., P.A. v. State*, 203 N.C. App. 593, 603 (2010). The Court of Appeals held that the "purpose in enacting the CON law was to protect the health and welfare of North Carolina Citizens by providing affordable access to necessary health care," and that purpose is "legitimate." *Id.*

19. As the Court of Appeals has previously addressed and upheld the constitutionality of the CON Law under the two-part inquiry outlined in *Poor Richard's* and reaffirmed in *Kinsley* and its determination is binding on the

Panel, Defendants' motion to dismiss regarding Plaintiffs' fruits of labor and law of the land claims is granted.

II. Emoluments Clause

20. Plaintiffs' further claim that the CON Law, on its face, grants an exclusive emolument to CarolinaEast, as the only entity in the Craven, Jones, Pamlico service area that owns operating rooms, in violation of Article I, Section 32 of the North Carolina constitution.

21. Article I, Section 32 provides that "[n]o person . . . is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services." N.C. Const. art. I, § 32.

22. The Supreme Court has previously held that "not every classification which favors a particular group of persons is an 'exclusive or separate emolument or privilege' within the meaning of the constitutional prohibition." *Lowe v. Tarble*, 312 N.C. 467, 470 (1984).

23. In sum, a statute which confers an exemption that benefits a particular group of persons is not an exclusive emolument or privilege within the meaning of Article I, Section 32, if: (1) the exemption is intended to promote the general welfare rather than the benefit of the individual, and (2) there is a reasonable basis for the legislature to conclude the granting of the exemption serves the public interest. *Town of Emerald Isle v. State of N.C.,* 320 N.C. 640, 654 (1987).

24. There need only be a "reasonable basis for the [l]egislature to conclude that the granting of the benefit would be in the public interest." *N.C. Utilities Comm'n v. CUCA*, 336 N.C. 657, 677 (1994).

25. The reasonable basis standard is deferential; the General Assembly is free to "choose from several alternatives to accomplish its desired result." *Crump v. Snead*, 134 N.C. App. 353, 357 (1999).

26. As the Court of Appeals previously determined in *Hope*, the General Assembly's purpose in enacting the CON Law was to protect the health and welfare of the citizens by providing affordable health care and it furthers the government's interest in protecting public health. *Hope,* 203 N.C. App. 593, 603.

27. There was a reasonable basis for the legislature to believe it would achieve its purpose by allowing the approval of new institutional health services only when a need for it had arisen and been determined by the SMFP.

28. Further, the CON Law does not foreclose future entry into Plaintiffs' service area by granting an exclusive privilege to the other provider, rather the CON regulates market entrants to meet the established needs of an area for operating rooms.

29. Plaintiffs argue that there is no meaningful different between today's CON law and the one struck down in *Aston Park,* and that the law excludes everybody who wants to provide certain healthcare services from the market unless they have a certificate of need.

30. As the General Assembly has the power to make "statutory changes" that "follow or are reflective of . . . decisions from [the] Court." *Rosero v. Blake*, 357 N.C. 193, 203 (2003). The current version of the CON Law is reflective of this power. The General Assembly codified detailed findings of fact to support the statute's enactment and resolved the deficiencies identified in *Aston Park*.

31. As such Plaintiffs' argument fails, and Defendants' motion to dismiss regarding Plaintiffs' emoluments claim is granted

III. Monopolies Clause

32. Plaintiffs argue that the effect of the CON Law on its face grants a monopoly to CarolinaEast and bans Plaintiffs from entering the market in violation of Article I, Section 34 of the North Carolina constitution.

33. Article I, Section 34 provides that "[p]erpetuities and monopolies are contrary to the genius of a free state and shall not be allowed." N.C. Const. art. I, § 34.

34. A monopoly results from ownership or control of so large a portion of the market for a certain commodity that competition is stifled, freedom of commerce is restricted, and control of prices ensues. *Am. Motors Sales Corp. v. Peters*, 311 N.C. 311, 315-16 (1984).

35. It denotes an organization or entity so magnified that it suppresses competition and acquires a dominance in the market. *Id.* The result is public harm through the control of prices of a given commodity. *State v. Atlantic Ice & Coal Co.*, 210 N.C. 742, 747-48 (1936).

36. While all monopolies restrain trade, not every restraint of trade leads to a monopoly in a particular market. *Am. Motors Sales Corp. v. Peters*, 311 N.C. at 315-16.

37. The distinctive characteristics of a monopoly are, then, (1) control of so large a portion of the market of a certain commodity that (2) competition is stifled, (3) freedom of commerce is restricted, and (4) the monopolist controls prices. *Id.*

38. A law or ordinance must preserve the possibility of future competition to pass constitutional muster under Section 34. *Madison Cablevision, Inc. y. City of Morganton*, 325 N.C. 634, 653-54 (1989).

39. Here, nothing in the CON Law prevents Plaintiffs from performing the eye surgeries patients require in procedure room as a certificate of need is not required to develop a procedure room; it is only required in to develop an operating room. As such, the CON Law does not prohibit Plaintiffs from entering the market.

40. Moreover, there are eighty-two (82) service areas in the state for operating rooms alone. Many of the operating room service areas not only have multiple providers, but new providers are entering those markets. Plaintiffs only allege that in their operating room service area, they are prevented from entering the market because of a one provider of operating room services.

41. While it is true that nine operating rooms in the Craven, Jones, Pamlico service area are owned by one provider—CarolinaEast—patients in the service area have access to a total of 80 operating rooms owned by nine different providers in the service areas bordering the Craven, Jones, Pamlico service area. Competition is not stifled, and individuals are free to choose from any of those nine providers.

42. Plaintiffs' arguments focus on their own inability to open an operating room without a certificate of need, but those allegations—taken as true—do not demonstrate that the CON Law is invalid in all circumstances.

43. The existence of numerous healthcare providers who have obtained certificates of need statewide confirms that the law operates constitutionally in a wide range of applications. Plaintiffs fail to address how it is facially unconstitutional in these applications.

44. Plaintiffs are unable to show that the CON Law has created a monopoly in the Craven, Jones, Pamlico service area. Accordingly, Defendant's motion to dismiss regarding Plaintiff's monopolies claim is granted.

45. Considering the merits, Plaintiffs' facial challenge to CON Law cannot overcome the high bar imposed by the presumption of constitutionally given to legislative acts.

It is therefore **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. Defendants' motion to dismiss is **GRANTED**;
2. Plaintiff's motion for partial summary judgment is **DENIED**;
3. Each of the claims contained in Plaintiff's amended complaint is **DISMISSED** with prejudice;
4. The parties shall bear their own costs and fees in this action; and
5. Final judgment is hereby entered accordingly.

12/10/2025 2:46:24 PM

SO ORDERED, this the 11th day of December, 2025.

12/11/2025 12:34:37 PM

Jeffery B. Foster
Superior Court Judge

12/11/2025 7:25:14 PM

Jacqueline D. Grant
Superior Court Judge

Troy J. Stafford
Superior Court Judge